

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION and ORDER

-vs-

11-CR-6149L
14-CV-6042L

DALE RICHMOND,

Defendant.

Defendant Dale Richmond pleaded guilty to all counts in a multi-count Indictment which related to theft and obstruction of mail by an employee of the United States Postal Service. On August 21, 2013, this Court sentenced Richmond to a term of imprisonment of twelve months and one day, three years of supervised release, a \$7,500 fine and restitution in the amount of \$7,807.

Richmond did not appeal, but on January 27, 2014, he filed what is styled as a motion pursuant to 28 U.S.C. § 2255 to vacate and set aside the Judgment and Conviction (Dkt. #54). The Government responded to the motion on February 26, 2014, by filing a motion to dismiss (Dkt. #56). Defendant's motion is in all respects denied.

To prevail on a motion under § 2255, the movant must establish that his conviction was obtained in violation of the Constitution or laws of the United States. Richmond makes no such

claim in his motion. Essentially the motion is a request for early termination of the sentence because of medical issues suffered by both he and his wife. The motion tracks submissions made under the Bureau of Prisons's regulations for Compassionate Release/Reduction In Sentence, as well as letters sent to the Court by Richmond's wife and his daughter relaying the medical problems of Richmond and his wife.

At the time of sentencing, this Court was aware that Richmond's wife had medical issues and that she relied upon him for care. Richmond himself apparently has been diagnosed with basal cell skin cancer, which is being treated by the Bureau of Prisons at a medical facility.

The Court imposed a sentence in this case of one year plus one day, which was well below the recommended sentence under the United States Sentencing Guidelines. Because of the relatively short term of imprisonment and good time credit, Richmond could be released within a few months.

The motion filed by Richmond pursuant to 28 U.S.C. § 2255 must be denied. Because Richmond has made no showing that his conviction and sentence were obtained as a result of any Constitutional violation. The motion is simply one more vehicle and attempt to reduce an already modest sentence imposed by the Court for Richmond's serious and repeat violations of the law.

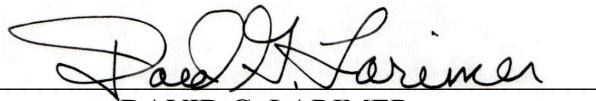
CONCLUSION

Defendant's motion under 28 U.S.C. § 2255 to vacate and set aside the Judgment and Commitment (Dkt. #54) is in all respects denied.

The Government's motion to dismiss defendant's motion (Dkt. #56) is granted.

I decline to issue a Certificate of Appealability because defendant has failed to make any showing of a Constitutional violation.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
April 4, 2014.